

Discussion Document - Exposure Draft – Sugar Industry Award 2016

INTRODUCTION

The Sugar Industry Award 2010 is being reviewed by the Fair Work Commission. The Exposure Draft does not seek to amend any entitlements under the Sugar Award but has been prepared to address some of the structural issues identified in modern awards.

A summary of proposed variations has been compiled by Ai Group where issues from each party is summarised. Refer to a listing of the parties on Page 4 of this document.

The ASMC opposes the deletion of the term “seasonal” from Clause 6.1 (b) as proposed by the AWU (refer to Item No 13 of the Summary of Proposed Variations Table). The Exposure Draft wording should be retained.

The heading of Clause 6 of the Exposure Draft is “Types of employment” where clause 6.1 covers Full-time employment. This discussion document provides background information to support retaining the current wording in Clause 6.1 (b).

BACKGROUND

Introduction of the 38 hour week

The Commission ratified the 38 hour week package effective from March 1984. The introduction of the 38 hour week added significant meaning to the word “seasonal”.

Three basic principles were applied with the introduction of the 38 hour working week.

- Provide more leisure time for employees
- Sugar mills would work a 40 ordinary hour week whilst crushing operations were in progress; and
- That changed work practices would lead to increased efficiency thus minimising the cost.

As a result of the above principles, the new arrangements incorporated the following:

- Leisure time was given in the form of complete days off duty (RDO's) rather than a reduction in the actual hours worked per day.
- RDO's are unpaid.
- The actual hourly rates of pay were increased so that;
 - a fulltime employee received the same amount of wages in 9 days that they would receive in 10 days during the maintenance season (fortnightly RDO's); and
 - a seasonal or employee deemed to be seasonal working over a four week cycle received in 19 days the same amount of wages that previously would be received in 20 days (1 RDO each 4 weeks).
- Due to the seasonal nature of the sugar industry, some employees work either during the crushing season or the maintenance season;
- The majority of employees work throughout the year apart from the closedown period at the end of the crushing season when annual leave is generally taken.

The above arrangements resulted in the employees being divided into two groups;

- Seasonal employees or those deemed to be seasonal employees for the purpose of a 38 hour week; and
- Employees who worked all year.

And

The working year being divided into two equal parts approximately corresponding to the crushing and maintenance seasons.

- the period considered the crushing season (“nominal crushing season”) would run from the first Monday in June up until the first Monday in December; and
- the “nominal maintenance season” would run from the first Monday in December up until the first Monday in June of the subsequent year.

Sugar Industry Award 2010 Definition

The current Sugar Award definition of a seasonal employee is described below.

Part 1 Clause 3, Definitions and interpretation

“**seasonal employee** means an employee who has been engaged by the employer on or about the commencement of the crushing season for the purpose of performing duties directly and indirectly related to crushing season operations and whose duties are completed and employment terminated on or about the end of the mill’s crushing season. For the purpose of a 38 hour week only, all employees not specifically engaged as seasonal, who are engaged after the first Monday of June in any one year and before the first Monday in June in the subsequent year, will be deemed to be seasonal until the first Monday of June in that subsequent year.”

Part 4 Clause 27.3 Method of work and payment for ordinary hours

“For the purposes of an average 38 hour working week in sugar mills, employees will be provided with unpaid rostered days off during the nominal maintenance season. To accommodate rostered days off the method of working ordinary hours and the method of payment will be as follows:” Refer to the Sugar Industry Award for full details of the clause.

DISCUSSION

Sugar Industry Award Amendments

At the time of the introduction of the 38 hour week, the following changes took place in the Sugar Industry Award;

Clauses Inserted

“For the purposes of a 38 hour week only, all sugar mill employees not specifically engaged as seasonals or as casual watchmen, who are engaged after the first Monday of June in any one year and before the first Monday of June in the subsequent year, shall be deemed to be seasonals until the first Monday of June in that subsequent year.”

40A (a) Seasonal Employees; and

40A (b) Employees other than Seasonals

- Method of Work and Payment for Ordinary Hours

- Payment of RDO allowance (5%) to seasonal employee or an employee deemed to be a seasonal
- Nominal Maintenance Season – Day and Shift work
- Introduction of rosters for RDO's
- Payment of Overtime when RDO's are worked

Method of Payment of Wages

In order to maintain ordinary earnings in both the nominal crushing season and nominal maintenance season, the following payment methods were applied:

Table 1 Payment Methods – 38 hour week

Hourly Divisor	Details of application
Weekly Rate/40	Applied in the nominal crushing season (26 weeks) to all employees except casuals.
Weekly Rate/38	All Overtime worked by all employees.
Weekly Rate/38	Applied to all ordinary hours in the nominal maintenance season (26 weeks) to all seasonal employees and all employees who are deemed to be seasonal for the purposes of a 38 hour week.
Weekly Rate/36	Applied to all ordinary hours in the nominal maintenance season (26 weeks) to all fulltime employees

Significance of the terminology “seasonal”

Table 2 Identified Differences between Seasonal and Fulltime employees

Description of differences	Seasonal	Fulltime
Payment for ordinary time – nominal maintenance season	38 divisor	36 divisor
Rostered days off – nominal maintenance season	1 per 4 weeks	1 per 2 weeks
LSL	May take leave between seasons	IR Act 1999 Section 43
Continuity of service	Not broken if full season is worked	IR Act 1999 Section 43
RDO	5% of nominal crush earnings	Compensated for in maintenance season divisor

RECOMMENDATION

Based on the differences listed in Table 2 and the possibility of a seasonal employee being classified as a fixed term employee by default, recommend that the word “seasonal” is not deleted from Clause 6.1. (b) of the Exposure Draft SIA 2016.

Below is an alternative definition of Seasonal Employee that may be considered.

1. **Seasonal.** Any employee who has accepted an offer of employment described in a letter of offer stating that it is a 'Seasonal' offer and stating an end date or end event which is linked to a specific season, is said to be a 'Seasonal' employee. A seasonal employee differs from a fixed-term employee to the extent that:
 - a. It is likely that the same or similar position will exist in the same season each year;
 - b. A seasonal employee maintains continuity (only for the purpose of calculating certain accruals) despite extended periods of absence due to their contract of employment coming to an end, provided that they work full consecutive seasons, whose start and completion dates are determined by the employer;
 - c. A Seasonal employee accrues certain entitlements as a result of continuity in seasonal employment eg. Personal/Carer leave accrual, Long Service Leave accruals.

REFERENCE LIST

ASPA Industrial Circular to Mills "IM" 4/1984

Industrial Relations Act 1999 - Sections 50 and 51 (seasonal employees)

Industrial Relations Act 1999 – Section 43 (employees other than seasonal)

Sugar Industry Award 2010

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LISTING OF THE PARTIES PROVIDING SUBMISSIONS

Australian Business Industrial and the New South Wales Business Chamber

Australian Industry Group

Australian Sugar Milling Council

Australian Workers Union

Office of the Fair Work Ombudsman

National Farmers' Federation